



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9970]

RIN 1545-BQ11

Information Reporting of Health Insurance Coverage and Other Issues under Sections 5000A, 6055, and 6056

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document includes final regulations under the Internal Revenue Code that provide an automatic extension of time for providers of minimum essential coverage (including health insurance issuers, self-insured employers, and government agencies) to furnish individual statements regarding such coverage and an alternative method for furnishing individual statements when the individual shared responsibility payment amount is zero. The final regulations also provide an automatic extension of time for “applicable large employers” (generally employers with 50 or more full-time employees, including full-time equivalent employees) to furnish statements relating to health insurance that the applicable large employers offer to their full-time employees. Additionally, the final regulations provide that “minimum essential coverage,” as that term is used in health insurance-related tax laws, does not include Medicaid coverage limited to COVID-19 testing and diagnostic services provided under the Families First Coronavirus Response Act. The final regulations affect some taxpayers who claim the premium tax credit; health insurance issuers, self-insured employers, government agencies, and other persons that provide minimum essential coverage to individuals; and applicable large employers.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: The regulations under §1.5000A-2 apply for months beginning after September 28, 2020. The regulations under §§1.6055-1 and 301.6056-1 apply for calendar years beginning after December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Gerald Semasek at (202) 317-7006 or Lisa Mojiri-Azad at (202) 317-4649 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 5000A and 6055 of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under section 6056 of the Code.

On December 6, 2021, a notice of proposed rulemaking (REG-109128-21) was published in the **Federal Register** (86 FR 68939) (2021 proposed regulations). The 2021 proposed regulations proposed amendments to the regulations under:

- Section 5000A that would provide that Medicaid coverage limited to COVID-19 testing and diagnostic services under section 6004(a)(3) of the Families First Coronavirus Response Act, Public Law 116-127, 134 Stat. 178 (Mar. 18, 2020) is not minimum essential coverage.
- Section 6055 that would provide an automatic extension of time for furnishing statements to responsible individuals¹ and permit an alternative manner for timely furnishing statements.
- Section 6056 that would provide an automatic extension of time for furnishing

¹ As provided in §1.6055-1(b)(11), a responsible individual includes a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

statements to full-time employees.

The preamble to the 2021 proposed regulations also included a renewed request for comments on rules (REG-103058-16) that were proposed in the **Federal Register** (81 FR 50671) on August 2, 2016 (2016 proposed regulations) relating to information reporting of minimum essential coverage under section 6055.

Ten comments were received in response to the 2021 proposed regulations. No public hearing was requested or held. After consideration of the comments received, this Treasury decision adopts the 2021 proposed regulations with clarifying modifications as final regulations, as discussed in the Summary of Comments and Explanation of Revisions section of this preamble. The Department of the Treasury (Treasury Department) and the IRS continue to consider the 2016 proposed regulations in light of the public comments received both in 2016 and in response to the request in the 2021 proposed regulations. The Treasury Department and the IRS expect to finalize the 2016 proposed regulations separately.

Summary of Comments and Explanation of Revisions

I. Minimum Essential Coverage Under Section 5000A

Under the Patient Protection and Affordable Care Act, Public Law 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, 124 Stat. 1029 (2010) (collectively the Affordable Care Act or ACA), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the ACA may claim a premium tax credit pursuant to section 36B. Section 36B and §1.36B-3 of the Income Tax Regulations provide that a taxpayer is allowed a premium tax credit only for months that are coverage months for individuals in the taxpayer's family, as defined in §1.36B-1(d). Under section 36B(c)(2)(B) and §1.36B-3(c)(1)(iii), a "coverage month" for an individual includes only those months for which the individual is not

eligible for minimum essential coverage other than coverage in the individual market.

Section 5000A(f)(1) defines “minimum essential coverage” to include various types of health plans and programs, including specified government-sponsored programs such as the Medicaid program under Title XIX of the Social Security Act. Section 1.5000A-2(b)(2) lists certain government-sponsored programs that do not constitute minimum essential coverage.

Notice 2020-66, 2020-40 I.R.B. 785, provides that Medicaid coverage that is limited to COVID-19 testing and diagnostic services under section 6004(a)(3) of the Families First Coronavirus Response Act is not minimum essential coverage under a government-sponsored program. Consequently, an individual’s eligibility for such coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the premium tax credit under section 36B.

Consistent with the guidance provided in Notice 2020-66, the 2021 proposed regulations would amend §1.5000A-2 by adding Medicaid coverage for COVID-19 testing and diagnostic services to the enumerated health coverages under §1.5000A-2(b)(2) that do not qualify as minimum essential coverage under a government-sponsored program. This amendment to §1.5000A-2 would apply for months beginning after September 28, 2020. Under the 2021 proposed regulations, for months beginning on or after January 1, 2020, and before September 28, 2020, taxpayers could rely upon Notice 2020-66. No comments were received on this proposed change. Accordingly, the Treasury Department and the IRS are finalizing the proposed amendment to §1.5000A-2 without change.

II. Information Reporting Under Sections 6055 and 6056 and Penalties Under Sections 6721 and 6722

Section 6055 requires all persons who provide minimum essential coverage to an individual to report certain information to the IRS that identifies covered individuals and

the period of coverage. See section 6055(a) and (b). Those persons are also required to furnish a statement to the covered individuals with the same information. See section 6055(c). These information returns and written statements were needed to administer the individual shared responsibility provisions under section 5000A until the individual shared responsibility payment amount was reduced to zero for months beginning after December 31, 2018 by Public Law 115-97, 131 Stat. 2054, 2092 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). As a result, covered individuals no longer needed the information on the written statements (Form 1095-B) to prepare and file their individual returns. However, the TCJA did not amend any of the reporting or furnishing requirements under section 6055.

Under section 6055 and §1.6055-1(f) and (g), every person that provides minimum essential coverage to an individual during the calendar year is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to the responsible individual identified on the return a written statement on or before January 31 of the year following the calendar year to which the statement relates. The IRS generally has designated Form 1094-B, Transmittal of Health Coverage Information Returns, and Form 1095-B, Health Coverage, to meet the section 6055 requirements.

Section 6056 requires an applicable large employer (ALE), as defined in section 4980H(c)(2) of the Code, that is subject to the requirements of section 4980H to file information returns annually and furnish written statements with respect to the health insurance, if any, that the employer offers to its full-time employees. The information returns are used by the IRS to administer the employer shared responsibility provisions of section 4980H, and by certain full-time employees to help determine if they are eligible for the premium tax credit under section 36B.

Under section 6056 and §301.6056-1(e) and (g), every ALE and member of an aggregated group that is determined to be an ALE (collectively, ALE member) is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 of the year following the calendar year to which the statement relates. The IRS generally has designated Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, to meet the section 6056 requirements.

In addition, an ALE member that offers coverage through a self-insured health plan must complete the reporting required under section 6055, specifically, the information regarding each individual enrolled in the self-insured health plan, using Form 1095-C, Part III, rather than Form 1095-B.

The current regulations under sections 6055 and 6056 allow the IRS to grant an extension of time of up to 30 days to furnish statements to individuals for good cause shown. See §§1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A). Additionally, under the current regulations the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing statements to individuals. See §§1.6055-1(g)(4)(i)(B)(2) and 301.6056-1(g)(1)(ii)(B). Through a series of notices, the Treasury Department and the IRS extended the due date for furnishing statements to individuals under sections 6055 and 6056 for calendar years 2015 through 2020.²

Section 6721 imposes a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Section 6722 imposes a penalty

² Notice 2016-04, 2016-3 I.R.B. 279 (Jan. 19, 2016); Notice 2016-70, 2016-49 I.R.B. 784 (Dec. 5, 2016); Notice 2018-06, 2018-3 I.R.B. 300 (Jan. 16, 2018); Notice 2018-94, 2018-51 I.R.B. 1042 (Dec. 17, 2018); Notice 2019-63, 2019-51 I.R.B. 1390 (Dec. 16, 2019); and Notice 2020-76, 2020-47 I.R.B. 1058 (Nov. 16, 2020).

for failing to timely furnish an information statement or furnishing an incorrect or incomplete information statement. The section 6721 and 6722 penalties are imposed regarding information returns and statements listed in section 6724(d), which include those required by sections 6055 and 6056. Section 6724 provides that no penalty will be imposed under section 6721 or 6722 with respect to any failure if it is shown that the failure is due to reasonable cause and not to willful neglect.

a. Automatic Extension of Time to Furnish Statements under Section 6055

To reduce administrative burdens for reporting entities and the IRS, the 2021 proposed regulations provided that reporting entities would be granted an automatic extension of time, not to exceed 30 days after January 31, in which to furnish the written statements required by §1.6055-1(g)(1). The 2021 proposed regulations also provided that if the extended furnishing date falls on a weekend or legal holiday, statements would be timely if furnished on the next business day.

Because this extension would be automatic, the 2021 proposed regulations would eliminate §1.6055-1(g)(4)(i)(B)(1), which allows a reporting entity to make a written application to the IRS to request an extension of time to furnish the statement. The 2021 proposed regulations also would eliminate §1.6055-1(g)(4)(i)(B)(2), under which the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6055.

Commenters expressed strong support for the proposal to amend §1.6055-1(g)(4) to provide a permanent, automatic extension of time during which a provider of minimum essential coverage must furnish written statements to individuals. One commenter acknowledged that the addition of the permanent, automatic extension of time for reporting entities to furnish statements obviates the need for the IRS to provide other extensions of time to furnish statements in most circumstances. The commenter nonetheless requested that the final regulations retain the provisions in §1.6055-

1(g)(4)(i)(B)(2) allowing the Commissioner, in appropriate cases, to prescribe additional guidance or procedures for automatic extensions of time for furnishing written statements.

After consideration of the comments received, the Treasury Department and the IRS are adopting with one clarifying change the proposal for a permanent, automatic extension of time for furnishing written statements to individuals pursuant to §1.6055-1(g). The 2021 proposed regulations provided that reporting entities would be granted an automatic extension of time not exceeding 30 days in which to furnish required statements. To provide a clear, definite rule, these final regulations expressly provide a 30-day, automatic extension of time. The permanent, 30-day automatic extension of time to furnish written statements replaces §1.6055-1(g)(4)(i) and provides adequate time for furnishing in most situations. Additionally, because a reporting entity may qualify for penalty relief pursuant to section 6724 by showing that a failure was due to reasonable cause and not to willful neglect, the request that §1.6055-1(g)(4)(i)(B)(2) be retained is not adopted.

While expressing support for the proposed rule, one commenter requested that the IRS communicate the automatic extension clearly and directly to state governmental bodies that have their own individual health insurance mandates and reporting requirements. According to the commenter, some states impose requirements similar to the reporting and furnishing requirements of section 6055. In these cases, the commenter suggested that the deadlines should be coordinated or made the same.

The Treasury Department and the IRS intend to revise the instructions for Form 1094-B and Form 1095-B to communicate the final rule's permanent, 30-day automatic extension of time for furnishing the required statements. However, the Treasury Department and the IRS have no authority over state reporting and furnishing requirements. Whether state deadlines for filing returns or other documents relating to

health coverage will align with the regulations is a question of state law. Accordingly, the Treasury Department and the IRS are not revising the regulations to coordinate with state reporting and furnishing requirements.

b. Automatic Extension of Time to Furnish Statements under Section 6056

To reduce administrative burdens for ALE members and the IRS, the 2021 proposed regulations provided that ALE members would be granted an automatic extension of time, not to exceed 30 days after January 31, in which to furnish written statements to full-time employees. The 2021 proposed regulations also provided that if the extended furnishing date falls on a weekend or legal holiday, statements would be timely if furnished on the next business day.

Because this extension would be automatic, the 2021 proposed regulations would eliminate §301.6056-1(g)(1)(ii)(A), which allows an ALE member to make a written application to the IRS to request an extension of time to furnish the statement. The 2021 proposed regulations also would eliminate §1.6056-1(g)(1)(ii)(B), under which the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6056.

Commenters expressed strong support for the proposal to amend §301.6056-1(g)(1) by providing a permanent automatic extension of time during which an ALE must furnish written statements to full-time employees. One commenter acknowledged that the addition of a permanent, automatic extension of time for reporting entities to furnish statements obviates the need for the IRS to provide other extensions of time to furnish statements in most circumstances. The commenter nonetheless requested that the final regulations retain the provisions in §301.6056-1(g)(1)(ii)(B) allowing the Commissioner, in appropriate cases, to prescribe additional guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6056.

After consideration of the comments received, the Treasury Department and the

IRS are adopting with one clarifying change the proposal for a permanent, automatic extension of time for furnishing written statements to individuals pursuant to §301.6056-1(g)(1). The 2021 proposed regulations provided that ALEs would be granted an automatic extension of time not exceeding 30 days in which to furnish required statements. To provide a clear, definite rule, these final regulations expressly provide a 30-day, automatic extension of time. The permanent, 30-day automatic extension of time to furnish written statements replaces §301.6056-1(g)(1) and provides adequate time for furnishing in most situations. Additionally, because a reporting entity may qualify for penalty relief pursuant to section 6724 by showing that a failure was due to reasonable cause and not to willful neglect, the request that §1.6056-1(g)(1)(ii)(B) be retained is not adopted.

c. Alternative Manner of Furnishing Statements under Section 6055

The 2021 proposed regulations provided an alternative manner for a reporting entity to timely furnish Forms 1095-B to responsible individuals.³ Under proposed §1.6055-1(g)(4)(ii)(B), the reporting entity first would be required to post a clear and conspicuous notice on the entity's website stating that responsible individuals may receive a copy of their statement upon request. The notice would have to include an email address, a physical address to which a request may be sent, and a telephone number responsible individuals may use to contact a reporting entity with any questions. Additionally, the 2021 proposed regulations provided that the notice would satisfy the requirements for the alternative manner of furnishing if it were written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. Under the 2021 proposed regulations, a reporting entity would be required to retain the notice in the same location

³ Notice 2020-76 provided a similar alternative manner of furnishing statements for coverage year 2020.

on its website until October 15 of the year following the calendar year to which the statement relates. The reporting entity would have to provide a Form 1095-B to a responsible individual within 30 days of the date of receipt of the individual's request. The proposed alternative manner of furnishing would apply only to taxable years when the individual shared responsibility payment amount under section 5000A(b) is zero.

Commenters generally supported the proposed amendments to §1.6055-1(g) allowing reporting entities to satisfy the furnishing requirements for Form 1095-B by using the alternative manner of furnishing. One commenter requested that the regulations under section 6056 also be amended to extend the alternative manner of furnishing rule to ALEs. The commenter asserted that the information included on Form 1095-C has limited utility because it only helps full-time employees determine if they are eligible for the premium tax credit. The commenter noted the potential environmental benefits, specifically the reduced use of paper and resources, that would result by allowing for the furnishing of forms only upon request.

As noted in Notice 2020-76, the preamble to the 2021 proposed regulations, and earlier in this Summary of Comments and Explanation of Revisions, individuals no longer need Form 1095-B because the TCJA reduced the amount of the individual shared responsibility payment to zero. This change in Federal law caused the Treasury Department and the IRS to consider whether it was possible to amend the section 6055 regulations to reduce burdens on providers of minimum essential coverage, while providing for continued compliance with the unchanged statutory requirements of section 6055. Thus, the Treasury Department and the IRS proposed the alternative manner of furnishing Form 1095-B in recognition that the TCJA mooted the primary purpose for which individuals would need Form 1095-B.

However, as noted earlier, Form 1095-C serves a different purpose than Form 1095-B. Form 1095-C is used to administer the employer shared responsibility

provisions of section 4980H and by certain full-time employees to help determine eligibility for the premium tax credit under section 36B. Neither the TCJA nor any other change in Federal law affects the employer shared responsibility provisions of section 4980H or the need for certain full-time employees to have information about their coverage offer to help determine eligibility for the premium tax credit under section 36B. Because the primary purpose for furnishing Form 1095-C is distinct from the primary purpose for furnishing Form 1095-B and was not affected by the changes made by the TCJA, the Treasury Department and the IRS conclude that it is not appropriate to amend the regulations under section 6056 to extend the alternative manner of furnishing rule to ALEs with regard to their full-time employees. However, the 2021 proposed regulations permitted, and these final regulations permit, ALEs to use the alternative manner of furnishing for non-employees and non-full-time employees for whom furnishing is required under §1.6055-1.

The commenter that requested the alternative manner of furnishing for Form 1095-C also expressed concern about the environmental impact of providing Forms 1095-C on paper, but that concern does not take into account the potential mitigation of providing the information electronically.

One commenter requested that the Treasury Department and the IRS eliminate the section 6055 reporting requirement for years when the individual shared responsibility payment amount is zero. According to the commenter, under the proposed alternative manner of furnishing statements, health insurance issuers and plan sponsors must continue to maintain record-keeping systems to complete Forms 1095-B that must be provided upon request. The continued requirement to maintain records, according to the commenter, imposes burdens and costs. Thus, the commenter requested that the regulations be revised to eliminate the requirement to furnish Form 1095-B even upon request.

As noted, the TCJA reduced the individual shared responsibility payment amount to zero for months beginning after December 31, 2018; however, the TCJA did not amend any of the reporting or furnishing requirements under section 6055. Because Congress did not repeal or otherwise modify the reporting and furnishing requirements in section 6055, the Treasury Department and the IRS have determined that there is insufficient statutory authority to eliminate the Form 1095-B requirement. Accordingly, the commenter's suggestion is not adopted.

The final regulations include clarifying, non-substantive changes to the language in proposed §1.6055-1(g)(4)(ii)(B) describing the alternative manner of furnishing. The final regulations also modify proposed §1.6055-1(g)(4)(ii)(B)(2) to provide that a reporting entity using the alternative manner of furnishing must post a notice on its website by the date specified in §1.6055-1(g)(4)(i) of these final regulations.

After consideration of the comments received, the Treasury Department and the IRS are adopting the proposed alternative manner of furnishing written statements to individuals under section 6055 with these clarifying changes.

III. Elimination of Transitional Good Faith Relief

The preamble to the 2021 proposed regulations described the genesis of the transitional good faith relief from penalties under sections 6721 and 6722, which the Treasury Department and the IRS provided to reporting entities in the preambles to the regulations under sections 6055 and 6056⁴ for calendar year 2015 and in IRS notices for calendar years 2016-2020.⁵ Under the transitional good faith relief, the IRS did not impose penalties under sections 6721 and 6722 on reporting entities if the entities could show that they made good faith efforts to comply with the information reporting requirements. In Notice 2020-76, the Treasury Department and the IRS stated that

⁴ See T.D. 9660, 79 FR 13220 (Mar. 10, 2014); T.D. 9661, 79 FR 13231 (Mar. 10, 2014).

⁵ See Notice 2016-70; Notice 2018-06; Notice 2018-94; Notice 2019-63; and Notice 2020-76.

2020 was the last year that transitional good faith relief would be provided. Consistent with Notice 2020-76, the Treasury Department and the IRS reiterated in the preamble to the 2021 proposed regulations that the transitional good faith relief would be discontinued after 2020.

Two commenters requested that the Treasury Department and the IRS reconsider terminating the transitional good faith relief, with one of the commenters suggesting that the relief be retained at least for calendar years 2022, 2023, and 2024. Specifically, one commenter advocated for continuation of the relief because health coverage information reporting, especially for ALEs, is complicated, and many employers continue to make unintentional mistakes. The commenter asserted that the reasonable cause standard would be insufficient to relieve employers from significant penalties. The commenter requested, at a minimum, good faith penalty relief for small employers (as defined under applicable state law) that are ALEs.

The other commenter asked that the transitional good faith relief be retained because, although the individual shared responsibility payment amount is zero, several states have imposed individual mandates regarding health insurance that require reporting; instructions for IRS forms respecting reporting are modified annually; and plans have faced compliance problems caused by the COVID-19 pandemic.

As discussed in the preamble to the 2021 proposed regulations, the good faith relief offered beginning in calendar year 2015 was intended to be transitional to accommodate public concerns with implementing the new reporting requirements under the ACA. These reporting requirements have now been in place for seven years, and transitional relief is no longer appropriate. Also, the Treasury Department and the IRS are of the view that additional good faith relief is not necessary to address the commenters' concerns. The reasonable cause exception under section 6724 already provides adequate relief from penalties under sections 6721 and 6722 for filers who

have reasonable cause for failing to timely or accurately complete their reporting requirements.

Applicability Date

The regulations under §1.5000A-2 apply for months beginning after September 28, 2020. For months beginning on or after January 1, 2020, and before September 28, 2020, taxpayers may continue to rely on Notice 2020-66.

The regulations under §§1.6055-1 and 301.6056-1 apply for calendar years beginning after December 31, 2021. As discussed in the Proposed Applicability Date section of the 2021 proposed regulations, taxpayers may rely on §§1.6055-1 and 301.6056-1 of the 2021 proposed regulations for calendar years beginning after December 31, 2020, and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. It has been determined that a final regulatory flexibility analysis under 5 U.S.C. 604 is required for this final rule. The analysis is set forth under the heading “Final Regulatory Flexibility Analysis.”

II. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

There is no collection of information contained in these final regulations. The collections of information contained in §§1.6055-1 and 301.6056-1 were previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and are associated with control numbers 1545-2251 (associated with Form 1095-C) and 1545-2252 (associated with Form 1095-B).

The Paperwork Reduction Act (44 U.S.C. 3501-3520) relates to information collection requests by any Government agency. A collection of information generally means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (1) answers to identical questions posted to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States, or (2) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. 44 U.S.C. 3502(3). A collection of information is commonly referred to as a reporting, recordkeeping, or disclosure requirement.

These final regulations do not require a reporting entity to provide any information to the Federal Government, to maintain specific records, or to disclose any additional information that the reporting entity did not already have a requirement to disclose.

III. Final Regulatory Flexibility Analysis

When an agency either issues a final rule that follows a required notice of proposed rulemaking or issues a final interpretative rule involving the internal revenue

laws that imposes a collection of information requirement on small entities as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to “prepare a final regulatory flexibility analysis.” A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), include the five elements listed in this final regulatory flexibility analysis. For purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3)-(6). Small business size standards define whether a business is “small” and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See title 13, part 121 of the Code of Federal Regulations (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. See title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

The Treasury Department and the IRS conclude that, although the overall impact of these final regulations will reduce the burden on small entities, these final regulations will impact a substantial number of small entities and the economic impact on those small entities may be significant. As a result, although the impact of these final regulations is positive for small entities, a final regulatory flexibility analysis is required.

A Statement of the Need for, and the Objectives of, the Final Rule

The final regulations under §1.5000A-2 make permanent the guidance in Notice 2020-66 regarding whether certain Medicaid coverage of COVID-19 testing and diagnostic services is minimum essential coverage. These final regulations will ensure that taxpayers have accurate guidance when determining whether they have minimum essential coverage, which in turn will assist taxpayers in determining whether they qualify for the premium tax credit.

The principal objective of the final regulations under section 5000A is to provide certainty that Medicaid coverage limited to certain COVID-19 testing and diagnostic services is not minimum essential coverage. Minimum essential coverage is defined in section 5000A(f)(1) and generally includes coverage under the Medicaid program under title XIX of the Social Security Act. However, §1.5000A-2(b)(2) lists certain types of services that are excluded from the definition of minimum essential coverage and these final regulations will add Medicaid coverage of certain COVID-19 testing and diagnostic services to that list. Thus, eligibility for this coverage will not preclude an individual from qualifying for the premium tax credit.

The final regulations under §§1.6055-1 and 301.6056-1 make permanent the extension of time to furnish Forms 1095-B and 1095-C to responsible individuals and employees that has been provided every calendar year since 2015. These final regulations will reduce the burden on reporting entities by extending the time to satisfy their furnishing obligations for certain health care coverage without the penalty under section 6722 being imposed. This extension should result in an increase in the timeliness and accuracy of the reporting.

The final regulations under §1.6055-1 also allow reporting entities to furnish the statement required by section 6055 by providing notice on their website and by providing the statement to the responsible individual upon request. These final regulations will reduce the burden on reporting entities by providing a less costly option to satisfy the furnishing obligation under section 6055 for tax years when individuals do not need to report health coverage information on their Federal income tax returns.

The principal objectives of the final regulations under section 6055 are to (1) provide reporting entities under section 6055 and section 6056 with additional time to complete and furnish accurate statements to responsible individuals and full-time employees; and (2) to offer reporting entities a minimally burdensome option by which

to furnish the statement required by section 6055. The legal basis for the extended due date for statements required under section 6055 and section 6056 was originally set forth in the series of notices referenced in the Summary of Comments and Explanation of Revisions section of this preamble. In those notices, the Treasury Department and the IRS extended the dates for furnishing statements to responsible individuals and full-time employees and provided that reporting entities that satisfy the furnishing requirement by the extended due date will not be subject to penalties under sections 6721 and 6722. Section 6724(a) provides that no penalty is imposed under section 6721 or 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect. The legal basis for the alternative manner of furnishing statements under section 6055 is in section 6055(b)(1)(A), which authorizes the Secretary to prescribe the form of the return that is required to be furnished under section 6055(c).

Summaries of the Significant Issues Raised in the Public Comments Responding to the Initial Regulatory Flexibility Analysis (IRFA) and of the Agency's Assessment of the Issues, and a Statement of Any Changes Made to the Rule as a Result of the Comments

No comments were received in response to the IRFA in the proposed regulations.

The response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule

Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why an Estimate is Not Available

These final regulations apply to health insurance issuers, self-insured employers, government agencies, and other providers of minimum essential coverage required to furnish individual statements regarding such coverage under section 6055, and to ALE

members that are required by section 6056 to furnish information relating to health insurance that the ALE offers to its full-time employees. An estimate of the number of small entities subject to these final regulations is not feasible because a correlation between small entities and this type of reporting cannot be made. These final regulations affect entities in all industries using any NAICS code.

A Description of the Projected Reporting, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record.

As discussed in the Paperwork Reduction Act section earlier in this preamble, these final regulations do not impose any reporting, recordkeeping, or similar requirements on any small entities that did not already apply to small entities.

A Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact On Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting Any Alternative Adopted in the Final Rule and Why Other Significant Alternatives Affecting the Impact on Small Entities That the Agency Considered Were Rejected.

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations and have determined that, without a legislative change, there are no viable alternatives to the provisions in the final regulations that would enable reporting entities to continue to satisfy their reporting obligations with a lesser burden. These final regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, these final regulations do not subject small entities to any requirements that are not also applicable to larger entities covered by the regulations.

Accordingly, the Treasury Department and the IRS conclude that the provisions of these final regulations will effectively promote sound tax administration. The additional exclusion from the definition of minimum essential coverage in §1.5000A-2 will provide guidance to ensure that taxpayers can adequately determine whether they

have minimum essential coverage that would preclude them from qualifying for a premium tax credit. An automatic extension of time to furnish statements under §§1.6055-1(g)(4)(i) and 301.6056-1(g)(1) will assist reporting entities to timely and accurately satisfy their statutory reporting obligations, while also reducing the cost and burden of having to request an extension. Last, the alternative manner of furnishing a statement in §1.6055-1(g)(4)(ii)(B), at a time when the individual shared responsibility payment amount is zero, will also help reporting entities reduce costs. Accordingly, implementation of these final regulations will increase tax compliance by providing definitive guidance to individuals, will allow reporting entities the time needed to furnish timely and accurate statements under sections 6055 and 6056, and will allow reporting entities an alternative method of furnishing statements under section 6055 to minimize their production and distribution costs.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This final rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not

impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal author of these final regulations is Gerald Semasek of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.5000A-2 is amended by revising paragraph (b)(2)(vii) and (viii); and adding paragraph (b)(2)(ix) to read as follows:

§1.5000A-2 Minimum essential coverage.

* * * * *

(b) * * *

(2) * * *

(vii) Coverage under 10 U.S.C. 1079(a), 1086(c)(1), or 1086(d)(1) that is solely

limited to space available care in a facility of the uniformed services for individuals excluded from TRICARE coverage for care from private sector providers;

(viii) Coverage under 10 U.S.C. 1074a and 1074b for an injury, illness, or disease incurred or aggravated in the line of duty for individuals who are not on active duty; and

(ix) Medicaid coverage limited to COVID-19 testing and diagnostic services provided under section 6004(a)(3) of the Families First Coronavirus Response Act, Pub. L. 116-127, 134 Stat. 178 (March 18, 2020).

* * * * *

Par. 3. Section 1.5000A-5 is amended by revising paragraph (c) to read as follows:

§1.5000A-5 Administration and procedure.

* * * * *

(c) Applicability date. Except as otherwise provided in this paragraph (c), this section and §§1.5000A-1 through 1.5000A-4 apply for months beginning after December 31, 2013. Section 1.5000A-2(b)(2)(ix) applies for months beginning after September 28, 2020.

Par. 4. Section 1.6055-1 is amended by revising the first sentence of paragraph (g)(1) introductory text and paragraphs (g)(4) and (j) to read as follows:

§1.6055-1 Information reporting for minimum essential coverage.

* * * * *

(g) * * *

(1) * * * Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, every person required to file a return under this section must furnish to the responsible individual identified on the return a written statement. * * *

* * * * *

(4) Time and manner for furnishing statements--(i) Time for furnishing. Except as

otherwise provided in this paragraph (g)(4)(i), a reporting entity must furnish the statements required under paragraph (g)(1) of this section on or before January 31 of the year following the calendar year in which the minimum essential coverage is provided. Reporting entities are granted an automatic, 30-day extension of time in which to furnish these statements.

(ii) Manner of furnishing—(A) In general. Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, if mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. For purposes of this paragraph (g)(4)(ii)(A), a reporting entity's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement. A reporting entity may furnish the statement electronically if the requirements of §1.6055-2 are satisfied.

(B) Alternative manner of furnishing. A reporting entity shall be treated as furnishing the statement in a timely manner under this paragraph (g)(4) if the individual shared responsibility payment amount under section 5000A(c) for the calendar year in which the minimum essential coverage is provided is zero and the reporting entity satisfies the requirements in this paragraph (g)(4)(ii)(B). If the reporting entity is an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section related to that plan, the applicable large employer member may use the alternative manner of furnishing described in this paragraph (g)(4)(ii)(B) for statements to non-full-time employees and non-employees who are enrolled in the applicable large employer's self-insured group health plan. The reporting entity satisfies the requirements of this paragraph (g)(4)(ii)(B) only if the reporting entity:

(1) Provides clear and conspicuous notice, in a location on its website that is

reasonably accessible to all responsible individuals, stating that responsible individuals may receive a copy of their statement upon request. The notice must include an email address, a physical address to which a request for a statement may be sent, and a telephone number that responsible individuals may use to contact the reporting entity with any questions. A notice posted on a reporting entity's website satisfies the requirements of this paragraph (g)(4)(ii)(B)(1) if it is written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. For example, a reporting entity's website provides a clear and conspicuous notice if it includes a statement on the main page -- or a link on the main page, reading "Tax Information", to a secondary page that includes a statement -- in capital letters, "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS"; explains how responsible individuals may request a copy of Form 1095-B, Health Coverage (or, for an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section, explains how non-full-time employees and non-employees who are enrolled in the plan may request a copy of Form 1095-C, Employer-Provided Health Insurance Offer and Coverage); and includes the reporting entity's email address, mailing address, and telephone number;

(2) Posts the notice on its website by the date specified in paragraph (g)(4)(i) of this section and retains the notice in the same location on its website through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday or legal holiday); and

(3) Furnishes the statement to a requesting responsible individual within 30 days of the date the request is received. To satisfy the requirement of this paragraph

(g)(4)(ii)(B)(3), a reporting entity may furnish the statement electronically pursuant to §1.6055-2(a)(2) through (6).

* * * * *

(j) Applicability date. Except as otherwise provided in this paragraph (j), this section applies for calendar years beginning after December 31, 2014. Paragraphs (g)(1) and (g)(4)(i) and (ii) of this section apply for calendar years beginning after December 31, 2021, but reporting entities may choose to apply paragraphs (g)(1) and (g)(4)(i) and (ii) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (j), paragraph (g)(4), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014, and beginning before January 1, 2022.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 301.6056-1 is amended by adding introductory text to paragraph (g)(1) and revising paragraph (m) to read as follows:

§301.6056-1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

* * * * *

(g) * * *

(1) Time for furnishing. Except as otherwise provided in this paragraph (g)(1), each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding the calendar year in accordance with applicable Internal Revenue Service procedures and instructions. Applicable large employers are granted an automatic, 30-day extension of time in which to furnish these statements.

* * * * *

(m) Applicability date. Except as otherwise provided in this paragraph (m), this section applies for calendar years beginning after December 31, 2014. Paragraph (g)(1) of this section applies for calendar years beginning after December 31, 2021, but applicable large employers may choose to apply paragraph (g)(1) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (m), paragraph (g)(1), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014, and beginning before January 1, 2022.

Melanie R. Krause,
Acting Deputy Commissioner for Services and
Enforcement.

Approved: December 6, 2022.

Lily Batchelder,
Assistant Secretary of the Treasury (Tax Policy).